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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,299	11/17/2003	John W. Steedly	4060	5225

27727 7590 12/21/2006  
PEDERSEN & COMPANY, PLLC  
P.O. BOX 2666  
BOISE, ID 83701

EXAMINER
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HANSEN, JAMES ORVILLE

ART UNIT	PAPER NUMBER
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3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,299	<b>Applicant(s)</b> STEEDLY, JOHN W.	
	<b>Examiner</b> James O. Hansen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 30, 2006 has been entered.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.
3. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "all of which front..." & "all of which sides" is confusing as presently worded and requires clarification so as to clearly set forth the metes and bounds of patent protection desired by applicant.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser [U.S. Patent No. 4,498,312] in view of Grogan [U. S. Patent No. 6,325,281].

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Schlosser (figures 1-4) teaches of a display case (fig. 1) consisting of a box (10) having front, right, rear and left sides with top edges (see fig. 2), the top edges having internal dimensions (viewed as the internal dimension of each top edge), and the box having a bottom, wherein the front, right, rear and left sides and bottom are composed of polystyrene foam (Styrofoam or similar material), and all of the sides and bottom are permanently attached together such that the top edges form a boundary of a space defined by the internal dimensions as readily apparent to the examiner; and a removable top (11) for the box, the top having an upper section (12) with a top covering, the upper section resting on the top edges of the front, right, rear and left sides when attached to the box and capable of forming a display platform, the upper section having a bottom side; wherein the top also includes a lower interior section (13) at the bottom side of the upper section, the lower interior section having external dimensions equal to or slightly less than the internal dimensions of the front, right, rear and left side top edges, so that the lower interior section fits within the space defined by the internal dimensions of the front, right, rear and left side top edges; and wherein the front, right, rear and left side top edges have external dimensions (viewed as the external dimension of each top edge), so that when assembled, all the top edges form a boundary of a perimeter defined by the external dimensions, and the upper section for the top of the box fits flush with these external dimensions, so that the top covering of the upper section enhances the appearance of the display platform.

Schlosser teaches applicant's inventive claimed case as disclosed above, but does not specifically state that the lower interior section is attached to the upper section [in Schlosser's case, the top could be formed as one piece or two dissimilar sized sections mechanically attached together] or state that the upper section comprises a material

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as prescribed by applicant. Grogan is cited as an evidence reference to show that it was known in the insulated box art to manufacture a removable top (60) having two sections (61, 62) that are secured to each other so as to form a "stepped" cover. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the removable top of Schlosser so as to form the top out of two sections that are secured together as taught by Grogan because this arrangement would form the same "stepped" cover yet provide the means to vary the materials of each section depending upon the needs or preferences of the user {assuming the top of Schlosser is formed as a single piece} while reducing the complexity of the manufacturing needed to produce the top. As to the upper section being manufactured from a prescribed material, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to vary the type of material used to produce the upper section of the top depending upon the anticipated use or need of the user since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious personal preference.

6. It is noted that applicant has amended the claim to include the transitional phrase "consisting of" so as to exclude any element not specified in the claim. In formulating the above rejection, the examiner has taken the position that the generic form of the box i.e., the housing and cover satisfy the claimed aspects of applicant's claim [col. 2, lines 60-68]. It is noted that Schlosser does further disclose that the box includes refrigerating elements 14-19 [col. 3, lines 1-21], but these elements are readily removable from the box and are inserted into the box when needed. As such,

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these elements are not part of the invention when the box is not in use (see col. 3, lines 44-54 for example). The incorporation of additional insulating elements that can be inserted into the box does not obviate the cited reference, for prior art purposes, in as much as applicant's box may be supplied with further insulating elements and articles to be housed.

### ***Response to Arguments***

7. Applicant's arguments with respect to claim 21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

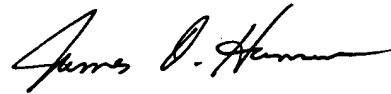
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Landgrebe, Chopas, Foster et al., Nagle et al., Douglas-Hamilton and Loucks describe insulated boxes having "stepped" shaped lids.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
December 18, 2006